

§ 105-164.44K. Distribution of part of tax on electricity to cities.

(a) Distribution. – The Secretary must distribute to cities forty-four percent (44%) of the net proceeds of the tax collected under G.S. 105-164.4 on electricity, less the cost to the Department of administering the distribution. Each city's share of the amount to be distributed is its franchise tax share calculated under subsection (b) of this section plus its ad valorem share calculated under subsection (c) of this section. If the net proceeds of the tax allocated under this section are not sufficient to distribute the franchise tax share of each city under subsection (b) of this section, the proceeds shall be distributed to each city on a pro rata basis. The Secretary must make the distribution within 75 days after the end of each quarter.

(b) Franchise Tax Share. – The quarterly franchise tax share of a city is the total amount of electricity gross receipts franchise tax distributed to the city under repealed G.S. 105-116.1 or repealed provisions of G.S. 159B-27 for the same related quarter that was the last quarter in which taxes were imposed on electric power companies under repealed G.S. 105-116 or repealed provisions of G.S. 159B-27. The quarterly franchise tax share of a city includes adjustments made for the hold-harmless amounts under repealed G.S. 105-116. If the franchise tax share of a city, including the hold-harmless adjustments, is less than zero, then the amount is zero. The determination made by the Department with respect to a city's franchise tax share is final and is not subject to administrative or judicial review.

The franchise tax share of a city that has dissolved, merged with another city, or divided into two or more cities since it received a distribution under repealed G.S. 105-116.1 or repealed provisions of G.S. 159B-27 is adjusted as follows:

- (1) If a city dissolves and is no longer incorporated, the franchise tax share of the city is added to the amount distributed under subsection (c) of this section.
- (2) If two or more cities merge or otherwise consolidate, their franchise tax shares are combined.
- (3) If a city divides into two or more cities, the franchise tax share of the city that divides is allocated among the new cities in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the city.

(c) Ad Valorem Share. – The ad valorem share of a city is its proportionate share of the amount that remains for distribution after determining each city's franchise tax share under subsection (b) of this section. The prohibitions in G.S. 105-472(d) on the receipt of funds by a city apply to the distribution under this subsection.

A city's proportionate share is the amount of ad valorem taxes it levies on property having a tax situs in the city compared to the ad valorem taxes levied by all cities on property having a tax situs in the cities. The ad valorem method set out in G.S. 105-472(b)(2) applies in determining the share of a city under this subsection based on ad valorem taxes, except that the amount of ad valorem taxes levied by a city does not include ad valorem taxes levied on behalf of a taxing district and collected by the city.

(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. The Governor may not reduce or withhold the distribution. (2013-316, s. 4.3(a); 2013-363, s. 11.2.)